

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCE

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Ex parte MICHAEL R. BLOOMBERG and HELMARS E. OZOLINS

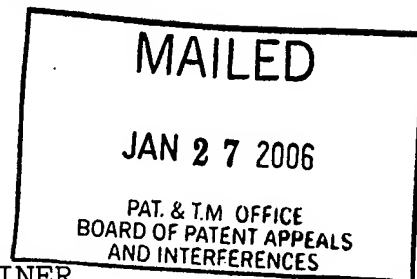
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Application 10/081,132

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on January 12, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing are identified below.

On August 6, 2002, appellants filed an Information Disclosure Statement (IDS). The examiner failed to properly consider the IDS according to MPEP § 609 which states:

" . . . The Examiner must also fill in his or her name and the date the information was considered in blocks at the bottom of the PTO-1449 or PTO/SB/O8B form."

Proper consideration is required.

A review of the Image File wrapper (IFW) indicates that appellant filed an Appeal Brief on August 8, 2005, using the format set forth in 37 CFR § 41.37(c). However, the Appeal Brief does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . . . .

(ix) **Evidence appendix.** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) **Related proceedings appendix.** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following sections are missing:

- 1) "Evidence appendix," as set forth in 37 CFR 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

[www.uspto.gov/web/offices/docn/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/offices/docn/bpai/fr2004/moreinfo.html)

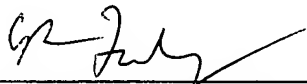
Accordingly, it is ORDERED that the application is return to the Examiner to:

- 1) consider the Information Disclosure Statements filed August 6, 2002;
- 2) provide appropriate written notification by the examiner to appellants of such consideration;
- 3) have a copy of the consideration of the Information Disclosure Statement scanned into the record;

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- 4) hold the Appeal Brief filed August 8, 2005 defective;
- 5) notify the appellant to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 6) for consideration of the supplemental Appeal Brief, and if necessary, submit a revised Examiner's Answer in response thereto; and
- 7) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
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CRAIG R. FEINBERG  
Program and Resource Administrator  
(571) 272-9797

CRF/pgc

cc: Brown Raysman Millstein Felder  
& Steiner LLP  
900 Third Avenue  
New York, NY 10022